

usually used for an ownership change. The County did not accept this as an ownership change but simply added Rock Springs Guest Ranch to the tax account on the property. The County Assessor records of 1961 show all the property in discussion plus other property under the control of the State of Oregon with a total acreage of 1,439. Lane said the County is also very interested in clearing up the status of these properties. (tape 2, mark 269)

At this time, the Commission went into Executive Session under ORS 192.660(1)(h) to consult with counsel concerning legal rights and duties regarding current litigation and litigation likely to be filed in this matter.

Returning from the Executive Session the Commission continued consideration of Agenda Items D.1 and D.2.

Mr. Volperte said Mr. Lane just handed him a copy of the deed from Deschutes County which states whereas settlers on the above described lands have not performed fully all the requirements under the Carey Act, deeds have not been issued to said lands by the State of Oregon.

Thorndike, referring to Agenda Item D.1, moved to approve the request for an easement with delegation of authority to the Director to complete the conveyance in a manner consistent with the following terms: to grant a perpetual non-exclusive 60-foot easement to Howard Nicholson and also to the State of Oregon, by and through the Division of State Lands, for ingress and egress, benefitting the properties owned by Nicholson to the east, and by the State of Oregon to the South, subject to any and all rights-of-way of the Tumalo Irrigation District; to require the applicant to pay compensation equal to the market value of the easement delegating to the Director the authority to establish the fair market value; and that all costs related to granting the easement be borne by the applicant. Motion seconded by Nakano. All voted in favor.

Thorndike, referring to Agenda Item D.2., moved to approve the application for entry with delegation of authority to the Director to complete the conveyance in a manner consistent with the following, based on three specific findings: 1) that we have a proper application as to the 39.84-acre parcel; 2) that we have no authority as to the remaining 80 acres on the basis that they are not subject to the Carey Act; 3) that there are no further requirements regarding reclamation, cultivation, and settlement of the 39.84-acre parcel as these conditions were fulfilled and documented by issuance of proof by the Desert Land Board in 1912 and also as reflected by issuance of the patent by the U.S. Government in 1921. Based on those findings Thorndike said the motion would be to deny the application with respect to entry to the 80-acre parcel on advice of counsel that it is not subject to the Carey Act, and approve the application for entry on the 39.84 acre parcel, subject to: a) reservation of a non-exclusive easement for ingress and egress benefitting the adjacent landowners to the east and the south, the easement being 60 feet in width, and running along the easterly edge of the parcel; b) payment to the State of Oregon equal to the fair market value of the property, delegating to the Director the authority to establish

the fair market value; and c) conveyance of the property via Quitclaim Deed without warranty of any kind as to any claims which may be made against title to the property at any future date. And that all costs related to the transaction are to be borne by the entryman. Motion seconded by Hansell. All voted in favor.

Later in the meeting Pagel announced that Jan Lee, Oregon Water Resources Congress, sent a fax expressing concern about protecting the Tumalo Irrigation District's right-of-way easement. Thorndike moved to clarify the record that with respect to the Commission's intentions, the actions taken on Items D.1 and D.2 are not intended in any way to affect any existing rights-of-way that the Tumalo Irrigation District might have over the property. The motion was seconded by Hansell; all voted approval.

#### **E. Annual Enforcement Report**

Dave Jarrett, Enforcement Section Manager; Kris Byrd, Monitoring Well Inspector; and Dave Williams, District 15 Watermaster, presented this informational report on 1998 field regulation and enforcement activities.

Jarrett reviewed the staff report and responded to questions and comments by Commissioners. He explained that each year the watermasters are asked to submit information on their surface water regulatory activities; this information is then compiled into an annual report (Attachment 2 of the staff report). Jarrett said a few changes were made to the 1998 report format to show water user compliance rate information as per WRD Measure 5 of the Oregon Plan.

Williams spoke on his experiences as a watermaster in the Umpqua Basin, pointing out various areas on the map. He discussed major water issues in the basin, some of which are water availability, the Pacificorp hydroelectric relicensing, recreational fishery, and Oregon Plan streamflow restoration. Williams distributed copies of the Umpqua Basin Oregon Plan water availability management plan and reviewed it with the Commissioners.

Kris Byrd spoke on his experiences as monitoring well inspector, showing Commissioners examples of typical wells inspected by staff, and photographs of some illegal situations.

#### **F. Legislative and Budget Update**

Tom Byler, Legislation and Rules Coordinator, updated the Commission on the status of water-related legislation. On April 20<sup>th</sup> the Senate Judiciary Committee met regarding Senate Bills 660, 661, 804, and 805 brought forward by Grants Pass Irrigation District (GPID). The proponents of those bills did not attend that April hearing. Senate Bills 804 and 805 are scheduled for the Senate Judiciary Committee again on May 4<sup>th</sup>.

On April 21<sup>st</sup> staff met with the House Water and Environment Committee regarding two Oregon Farm Bureau bills, HB 3356 and 3357.

On April 22<sup>nd</sup> the Senate Water and Land Use Committee held hearings on SB 1245 and SB 1246, brought forward by Oregonians in Action and the Oregon Association of Realtors. These two bills involve agencies' ability to enter private property in carrying out their duties. These bills were referred to the Senate Rules Committee. SB 1185, relating to well placement, was also referred to the Senate Rules Committee

The Senate Water and Land Use Committee passed out SB 987, another bill stemming from the GPID situation, which would require legislative approval before the Commission can require removal of a dam or artificial structure. This bill was passed out with amendments which would require that before a dam is removed a sediment sample must be taken.

The Senate Water and Land Use Committee also passed out SB 1098, brought forward by the Oregon Water Resources Congress, and supported by the Department. The bill proposes to extend some temporary provisions in the conserved water program.

On April 27<sup>th</sup> the Senate Water and Land Use Committee passed out SB 959, which involves mitigation of impacts of proposed ground water withdrawals on surface water flows in the Deschutes Basin. That same day the Stream Restoration and Species Recovery Committee passed out HB 3620 which is part of the agreement reached between state agencies and the Inland Land Company; it would allow for permit amendments to be made authorizing a change in the place of use to noncontiguous lands if necessary to mitigate for detrimental effects under the state or federal Endangered Species Act.

April 28<sup>th</sup> the House Water and Environment Committee passed out HB 2833, an irrigation district transfer bill, supported by the Department. HJM 4 relating to the Klamath Basin, urging the federal government to operate the Klamath Project in accordance with Oregon water law, also passed out of this Committee. Two GPID bills, HB 3065 and 3075, which would legislatively grant a water right to GPID, passed out of the House Water and Environment Committee on the 28<sup>th</sup>; HB 3075 would also adopt the Savage Rapids Dam Task Force recommendations made several years ago.

April 29<sup>th</sup> the Senate Water and Land Use Committee passed out HB 2163, a WRD bill, relating to the Water Development Loan Fund.

SB 299, a WRD bill, relating to changes of unadjudicated pre-1909 claims to water use, is still in the Senate Water and Land Use Committee. The Department supports the policy idea behind the bill, but the bill is clouded by an issue between the city of Springfield and a property owner.

Today, April 30<sup>th</sup>, HB 2162, the WRD hydroelectric bill, is up before the House Water and Environment Committee. This bill has significant amendments which include the final consensus recommendations of the Hydro Task Force.

HB 2600, another GPID bill, which considers irrigation seepage as a beneficial use, will be heard Monday, May 3<sup>rd</sup>, by the House Water and Environment Committee. There is an amendment to this bill which would exempt the use of water for certain irrigation districts augmenting flows so water could be pushed through canals. This bill is similar to the other GPID bills in that they are all specially designed for GPID and could present problems for other water users.

HB 3346, another GPID bill, will also be heard next Monday. It would require a sediment study prior to removing any dam.

HB 3280 will be heard May 3<sup>rd</sup>. This bill was the subject of a "gut and stuff," and would now involve a minor amendment to the exempt use statute for surface water to allow existing stored water to be used for emergency firefighting and non-emergency firefighting training.

#### **G. Update on Permit Extensions**

Dwight French, Acting Administrator for Water Rights Division, and Pat Lee, Special Projects Coordinator, briefed the Commissioners on the implementation of the permit extension rules adopted in October 1998.

Lee said staff have made great efforts to alert existing and potential permit holders of these new rules. Attachment 3 of the staff report provides a statistical breakdown of permit extension application processing during the past six months. Lee said that based on this experience working with the new rules, several activities have been initiated to refine the process.

Lee reminded the Commissioners that this rulemaking was somewhat controversial and there was agreement among key stakeholders to give the process a try to see how it works. There has been legislation submitted on extensions. HB 3236 would restrict the scope of good cause review for permit extensions only to competing demands of other permit holders. SB 300, submitted by the Department, would eliminate the one-year start of construction date for new water right permits. SB 575, submitted by the Senate Judiciary Committee, would allow a waiver of the one-year start of construction date on a case-by-case basis. SB 1165 would eliminate any standard timelines and direct the Department to establish them on a case-by-case basis; it would allow extensions of time for start of construction, and provide an automatic permit extension to November 2, 2003, for all water right permits for which applications for extensions were on file with the Department at the time these rules went into effect.

Public Comment

Roger Bachman, Oregon Trout, agreed that this rulemaking was very contentious. The rules that were finally adopted are flawed in Oregon Trout's view, but the organization decided to see how they would go. Some of the flaws are provisions that are included in statute which do not make much sense to Oregon Trout, but no one had suggested amending the statute. The most important provisions have to do with diligence in pursuing the application and good cause for providing an extension. Because of these matters, Bachman said he decided to review the extensions and offer comment. He has written the Department about situations where he believes the applicant's answers to questions are not adequate, and the Department accepts these answers. He believes more detail should be required. Bachman said he is pleased to see that some extension requests have been denied. He believes the Boeing extension request for nine permits did not pass the diligence or good cause test. The Department considers these permits to be valid and has proceeded on that basis, but Oregon Trout is very disappointed in the proposal negotiated with those folks. There was tremendous political strong arm pressure even in the face of mounting evidence that summertime flows in the Columbia are not adequate for endangered fish. Bachman said it is always disappointing when regulators have to cave in to political bullying. Bachman said he is pleased that Oregon Trout's complaints led to reduction of the acres to be irrigated and the flows to be diverted. But Oregon Trout is appalled at the mitigation deal, particularly two buckets of credit for one bucket replaced. It sets a terrible precedent. Bachman said he believes the news release is less than fully disclosing when it speaks of provisions to mitigate potential impacts to salmon and the Washington ground squirrel. It will cost Inland only \$2 million and that will be tax deductible. But who knows how much water \$2 million will buy; that has not been analyzed.

Pagel said she has a meeting scheduled with WaterWatch and Oregon Trout to explain and discuss the Boeing/Inland Land permit extensions. For the record, Pagel said to the extent she is the regulator who signed the orders, she admits there was political activity around it, but she did not in any way cave to political bullying on this matter. She felt a very strong motivation to try to come up with what was thought to be a good balance and a fair outcome.

There being no further business to discuss, the meeting was adjourned.

Respectfully submitted,



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